

of subdivisions (i) and (ii) of subparagraph (2) of paragraph (e) and notifies the plan of the amount of compensation paid on which tax was withheld and deposited within the time required for notification of the employer under subparagraph (2) of paragraph (e), then the plan (and not the third party insurer) shall be required to pay the tax imposed by section 3221 and to comply with the requirements of section 6051 and §§31.6051-1 and 31.6051-2 with respect to such payments unless, within 6 business days of the receipt of such notification, the plan notifies the employer for whom services are normally rendered of the amount of the compensation on which tax was withheld and deposited. If the plan provides such notice to the employer, the employer (and not the plan) shall be required to pay the tax imposed by section 3221 and to comply with the requirements of section 6051 and §§31.6051-1 and 31.6051-2 with respect to the compensation.

[T.D. 7823, 47 FR 29225, July 6, 1982, as amended by T. D. 7867, 48 FR 793, Jan. 7, 1983]

PART 34—[RESERVED]

PART 35—TEMPORARY EMPLOYMENT TAX AND COLLECTION OF INCOME TAX AT SOURCE REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

AUTHORITY: 26 U.S.C. 6047(e), 96 Stat. 625; 26 U.S.C. 7805; 68A Stat. 917; and sec. 334(e) (5) and (6) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 623).

§35.3405-1 Questions and answers relating to withholding on pensions, annuities, and certain other deferred income.

The following questions and answers relate to withholding on pensions, annuities, and other deferred income under section 3405 of the Internal Revenue Code of 1954, as added by section 334 of the Tax Equity and Fiscal Responsibility Tax Act of 1982 (Pub. L. 97-248) (TEFRA):

- a. In general.
- b. Periodic payments.

- c. Nonperiodic distributions.
- d. Notice and election procedures.
- e. Reporting and recordkeeping.

A. IN GENERAL

a-1. Q. How did TEFRA change the law on withholding requirements for pensions, annuities, and other deferred income?

A. TEFRA amended the Internal Revenue Code to impose withholding requirements on designated distributions paid after December 31, 1982. Further, although under prior law individuals could elect to have Federal income tax withheld from certain pension and annuity payments, TEFRA requires withholding on all designated distributions unless the payee elects not to have withholding apply.

a-2. Q. What type of payment is a designated distribution that is subject to the new withholding rules?

A. A designated distribution is any distribution or payment from or under an employer deferred compensation plan, an individual retirement plan (as defined in section 7701(a)(37)), or a commercial annuity. However, a designated distribution does not include any portion of a distribution which it is reasonable to believe is not includible in the gross income of the payee. For rules concerning when it is reasonable to believe that all or part of a distribution is not includible in the gross income of the recipient, see questions a-24 through a-33. In addition, a payment or distribution that is treated as wages under section 3401(a) is not a designated distribution subject to the new withholding rules. For examples of these payments, see questions a-18 through a-23.

a-3 Q. What is an employer deferred compensation plan for purposes of the new withholding rules?

A. An employer deferred compensation plan is any pension, annuity, profit-sharing, stock bonus, or other plan that defers the receipt of compensation.

a-4. Q. What is a commercial annuity for purposes of the new withholding rules?

A. A commercial annuity is an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any State. See, also, question f-21.